

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PATRICK KINGSTON

Plaintiff,

ANSWER

vs.

Civil No. 12-cv-00349-WMS-LGF

CARDINAL O'HARA HIGH SCHOOL,
THE DIOCESE OF BUFFALO, N.Y.,
THE BOYS AND GIRLS CLUB OF THE
NORTHTOWNS FOUNDATION, INC.

Defendant, The Boys and Girls Club of the Northtowns Foundation, Inc., by its attorneys, Damon & Morey, LLP, for its answer to plaintiff's Complaint alleges upon information and belief:

1. Denies the allegations contained in paragraphs 1, 19 and 20 of plaintiff's Complaint.
2. Denies any knowledge or information sufficient to form a belief with respect to the allegations contained in paragraphs 2, 3, 4, 6, 7, 11, 14, 15 and 16 of plaintiff's Complaint.
3. With respect to paragraph 5 of plaintiff's Complaint, defendant, The Boys and Girls Club of the Northtowns Foundation, Inc., admits that they are a not-for-profit entity duly organized and existing in the State of New York and deny the remaining allegations contained therein.
4. With respect to paragraph 8 of plaintiff's Complaint, defendant, The Boys and Girls Club of the Northtowns Foundation, Inc., admits that a wrestling event occurred on April 15, 2011 at Cardinal O'Hara High School, but denies knowledge with respect to the characterization of the event as an exhibition or theatrical performance.

5. With respect to paragraphs 9, 12, 13, 17, 22, 23, 24 and 25 of the plaintiff's Complaint, this answering defendant denies the allegations insofar as said allegations relate or refer to the defendant, The Boys and Girls Club of the Northtowns Foundation, Inc., and deny any knowledge or information sufficient to form a belief as to the allegations relating or referring to remaining defendants

6. With respect to paragraph 10 of plaintiff's Complaint, defendant, The Boys and Girls Club of the Northtowns Foundation, Inc., admits they had knowledge of the event, but deny the remaining allegations contained therein.

7. Repeat, reiterate and reallege each and every admission or denial of the allegations contained in paragraphs 18 and 21 of the plaintiff's Complaint with the same force and effect as though fully set forth therein.

8. Defendant denies each and every allegation of the complaint not otherwise specifically admitted or denied.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THIS ANSWERING
DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

9. That plaintiff's Complaint fails to state a proper cause of action with respect to this answering defendant and, therefore, should be dismissed.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THIS ANSWERING
DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

10. That at the time and place set forth in the Complaint, plaintiff assumed the risk(s) incidental to the activity that he was engaged. The injuries alleged by plaintiff were caused by and arose out of such risks.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THIS ANSWERING
DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

11. That the injuries as alleged in the plaintiff's Complaint were caused in whole or in part or were contributed to by the culpable conduct or want of care and assumption of risk on the part of the plaintiff and without any negligence, fault or want of care on the part of this answering defendant, and that plaintiff's damages are to be diminished by the portion of plaintiff's culpable conduct.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THIS ANSWERING
DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

12. That upon trial of this action, it may appear that documentary evidence exists which establishes a complete defense to this action.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THIS ANSWERING
DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

13. Upon information and belief, plaintiff signed a waiver/release which prohibits him from recovering from defendants.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THIS ANSWERING
DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

14. Plaintiff failed to mitigate his damages.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THIS ANSWERING
DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

15. All or part of the cost of plaintiff's medical care, loss of earnings or other economic loss may have been paid, replaced or indemnified in whole or in part from collateral sources or with reasonable certainty, will be replaced or indemnified in the future from such

collateral sources and to that extent, the defendant, The Boys and Girls Club of the Northtowns Foundation, Inc., requests that in the event plaintiff recovers any judgment herein, that such amounts as have been or may be recovered in whole or in part from collateral sources be determined by the court and the amounts plaintiff recovers be reduced by said amounts.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST THE
REMAINING DEFENDANTS, THIS ANSWERING DEFENDANT
ALLEGES UPON INFORMATION AND BELIEF:**

16. That the defendant, The Boys and Girls Club of the Northtowns Foundation, Inc., denies any negligence on their part which was a proximate cause of the injuries alleged in the complaint, but if the defendant, The Boys and Girls Club of the Northtowns Foundation, Inc., are found liable to the plaintiff, then such liability will have been brought about by reason of the active and primary negligence on the part of the co-defendants, Cardinal O'Hara High School and The Diocese of Buffalo, N.Y., and if the defendant, The Boys and Girls Club of the Northtowns, Inc, is found liable to any degree in this action to the plaintiff, then defendant, The Boys and Girls Club of the Northtowns, Inc., will be entitled to indemnification by and judgment over and against the co-defendants, Cardinal O'Hara High School and The Diocese of Buffalo, N.Y., for the full amount of said liability, or for such proportionate share as represents the full amount, degree or kind of negligence attributable to the co-defendants, Cardinal O'Hara High School and The Diocese of Buffalo, N.Y., pursuant to Article 14 of the Civil Practice Law and Rules.

WHEREFORE, defendant, The Boys and Girls Club of the Northtowns Foundation, Inc., demand judgment (1) dismissing the plaintiff's Complaint, (2) that the plaintiff's damages be diminished in the proportion which the culpable conduct and contributory negligence attributed to plaintiff bears to the culpable conduct and negligence which caused such damages,

and (3) further demands judgment against co-defendants, Cardinal O'Hara High School and The Diocese of Buffalo, N.Y., for the full amount of any judgment rendered herein in favor of the plaintiff and against the defendant, The Boys and Girls Club of the Northtowns Foundation, Inc., or for such proportionate share of any such judgment as represents the amount, degree or kind of negligence attributable to the co-defendants, Cardinal O'Hara High School and The Diocese of Buffalo, N.Y., together with the costs and disbursements of this action.

DATED: Buffalo, New York
May 1, 2012

DAMON MOREY LLP



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